

FILED IN MY OFFICE
DISTRICT COURT CLERK
2/22/2013 5:26:00 PM
GREGORY T. IRELAND

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

Patricia Serna

VIOLA MARTINEZ and
LAURO MARTINEZ

Plaintiffs,

-vs-

No. D-202-CV-2013-01930

SAFECO INSURANCE COMPANY OF AMERICA, and
LIBERTY MUTUAL GROUP

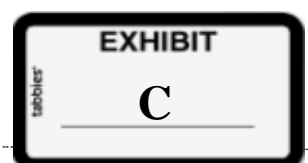
Defendants.

**COMPLAINT FOR COMPENSATORY DAMAGES AND FOR DECLARATORY
JUDGMENT UNDER CONTRACT OF INSURANCE**

Plaintiffs Viola Martinez and Lauro Martinez by and through their attorney of record Rios Law Firm (Linda J. Rios) and for their complaint against Defendants Safeco Insurance Company of America and Liberty Mutual Group state and allege the following:

**I.
GENERAL ALLEGATIONS**

1. Plaintiffs Viola Martinez and Lauro Martinez, husband and wife, are residents of Albuquerque, Bernalillo County, State of New Mexico.
2. Upon information and belief, at all relevant times, Mary Rubidoux was an underinsured motorist who was a resident of Albuquerque, Bernalillo County, State of New Mexico.
3. On or about February 22, 2007, Plaintiff Viola Martinez was operating a 2005 Buick in an easterly direction on Montano in Albuquerque, Bernalillo County, New Mexico.



4. On or about said date, Ms. Rubidoux was operating a 1998 Nissan in a northerly direction on Montano Plaza NW, Albuquerque, New Mexico.

5. Ms. Rubidoux attempted to make a right turn onto eastbound Montano hitting Plaintiff Viola Martinez's vehicle thereby causing the collision.

6. At all times hereto, Plaintiff Viola Martinez was operating her vehicle in a safe and proper manner.

7. At the aforesaid date and place, Mr. Rubidoux operated her vehicle in a careless, reckless, and negligent manner in that she failed to use ordinary care in the operation of her vehicle and failed to yield the right of way.

8. Ms. Rubidoux was cited for failure to yield the right of way.

9. As a direct and proximate result of the wrongful conduct of Ms. Rubidoux, the vehicles described hereinabove did collide with great force.

10. At all relevant times, Plaintiff Viola Martinez was insured under a policy of insurance issued by Defendants Safeco Insurance Company of America, Liberty Mutual Group and their subsidiaries (hereinafter "Defendants") and numbered Y6517552.

11. Upon information and belief, Defendants are insurance companies as defined under the laws of the State of New Mexico, authorized to do business in the State of New Mexico, and conducting business within Bernalillo County, New Mexico.

12. Defendants are foreign corporations organized under the laws of another state and with their principal place of business in another state.

13. At all times material hereto, Plaintiff Viola Martinez carried a contract of insurance with Defendants, which included Uninsured/Underinsured Motorist Coverage.

14. The present dispute between Plaintiffs and Defendants arises from the contract of insurance and the obligations of Defendants and the rights of Plaintiffs thereunder.

15. Plaintiff Viola Martinez was involved in a motor vehicle collision caused by the negligent actions and omissions of an underinsured motorist, Mary Rubidoux.

16. Plaintiff Viola Martinez promptly reported the collision to her insurance company, with the intention of making claims for benefits afforded under her policy.

17. Plaintiff Viola Martinez did suffer bodily injury, bodily harm and property damage.

18. All incidents giving rise to this complaint occurred in Albuquerque, Bernalillo County, State of New Mexico.

20. This Court has jurisdiction over the parties and the subject matter of this action.

21. Venue is proper in this Court.

22. As a further direct and proximate result of the Defendants wrongful conduct, Plaintiff Viola Martinez did suffer injuries and damages including, but not limited to, emotional and physical injuries, past incurred medical expenses, future medical expenses, loss of use of her vehicle, property damages, loss of life's enjoyment, loss of household services, and emotional and physical pain and suffering; all to Plaintiff's great loss in an amount to be proven at trial.

II.

CLAIM FOR UNINSURED/UNDERINSURED MOTORIST BENEFITS AGAINST SAFECO INSURANCE COMPANY OF AMERICA, AND LIBERTY MUTUAL GROUP

29. Plaintiffs incorporate by reference the previous paragraphs as though fully set forth herein.

30. At all times pertinent hereto, Mary Rubidoux was an underinsured motorist as defined by New Mexico law, and as contemplated by the Financial Indemnity policy.

31. At all times pertinent hereto, Ms. Rubidoux engaged in intentional, knowing, reckless conduct for which coverage under her policy of insurance excluded coverage and carried insufficient coverage to fully compensate Plaintiffs for the damages caused in the auto collision.

32. As a result of Ms. Rubidoux's underinsured/uninsured status, and the insurance contract between Defendants and Plaintiffs Viola and Lauro Martinez, Plaintiffs are entitled to recovery damages incurred as a result of the February 22, 2007, motor vehicle collision from Defendants under the Uninsured/Underinsured Motorist coverage provisions of Plaintiffs aforementioned policy.

33. Defendants should be directed to pay Plaintiffs an amount sufficient to compensate each Plaintiff for their damages resulting from their injuries, losses and all other damages caused by the incident described more fully herein.

III. DECLARATORY JUDGMENT

34. Plaintiffs incorporate by reference the previous paragraphs as though fully set forth herein.

35. At the time of the events described herein, Plaintiffs Viola Martinez and Lauro Martinez carried a policy of insurance with Defendants Safeco Insurance Company of America and Liberty Mutual.

36. The insurance policy issued to Plaintiffs and insuring Plaintiff Viola Martinez was a valid and enforceable contract between Plaintiffs and Defendants Safeco

Insurance Company of America and Liberty Mutual on the date of the incident made the basis of this litigation.

37. Defendants Safeco Insurance Company of America and Liberty Mutual insurance policy provided uninsured/underinsured motorist benefits to Plaintiff Viola Martinez on the date of incident and she is the first party beneficiary of the uninsured/underinsured motorist coverage provided by contract with Defendant Safeco Insurance Company of America and Liberty Mutual.

38. The subject accident involving Plaintiff Viola Martinez is an occurrence triggering coverage under the uninsured/underinsured motorist benefit provisions of the policy written by Defendants Safeco Insurance Company of America and Liberty Mutual and held by Plaintiffs Viola and Lauro Martinez.

39. Plaintiff Viola Martinez made a claim for damages with Defendants Safeco Insurance Company of America and Liberty Mutual in a timely manner, has cooperated with said Defendants, and has otherwise performed all conditions precedent to her right to pursue a claim for damages under the uninsured/underinsured motorist portion of the subject policy stemming from the subject incident.

40. Plaintiff has provided Defendant Safeco Insurance Company of America and Liberty Mutual with all relevant information regarding liability and Plaintiffs' damages arising from the subject occurrence and has given Defendants Safeco Insurance Company of America and Liberty Mutual access to her medical records and billing summaries.

41. Defendants Safeco Insurance Company of America and Liberty Mutual is disputing, disregarding, failing to investigate, ignoring or denying aspects of the claim,

coverage, and conduct giving rise to compensatory and punitive damages coupled with refusing to consider the factual basis for the uninsured/underinsured motorist coverage claim in violation of Plaintiffs rights and interests.

42. An actual controversy or dispute has arisen and exists between Plaintiffs and Defendants Safeco Insurance Company of America and Liberty Mutual as to the determination of their respective rights and obligations under the subject policy of insurance.

43. An actual controversy or dispute has arisen and exists between Plaintiffs and Defendants Safeco Insurance Company of America and Liberty Mutual as to their obligations under the policy of insurance and the application of coverage in this matter.

44. Said controversies or disputes are subject to resolution by this Court pursuant to the Declaratory Judgment Act Section 44-6-1 et. seq., NMSA.

IV. LOSS OF CONSORTIUM

45. Plaintiffs re-allege and incorporate by reference all prior paragraphs as if fully set forth herein.

46. As a further direct and proximate result of the wrongful conduct of Defendants, Plaintiff Lauro Martinez has suffered the loss of consortium, care, companionship, and household services of his wife, Plaintiff Viola Martinez, all to his great damage in an amount to be proven more specifically at trial.

WHEREFORE, Plaintiff request a judgment against Defendants and the following remedies:

1. For Compensatory Damages;

2. Punitive and Exemplary Damages;
3. For Pre and Post judgment interest on all sums awarded hereunder at the statutory rate from the date of Judgment until paid in full;
4. Costs incurred in the prosecution of this action;
5. For declaration of this Court as to the respective rights and obligations between Plaintiffs and Defendants Safeco Insurance Company of America and Liberty Mutual under the terms of the subject insurance policy, and for Order of this Court that the parties act in accordance with that declaration.
6. For such other and additional relief as the Court may deem proper.

Respectfully submitted,

RIOS LAW FIRM

/s/ Linda J. Rios, Esq.

BY: Linda J. Rios

ATTORNEY FOR PLAINTIFF

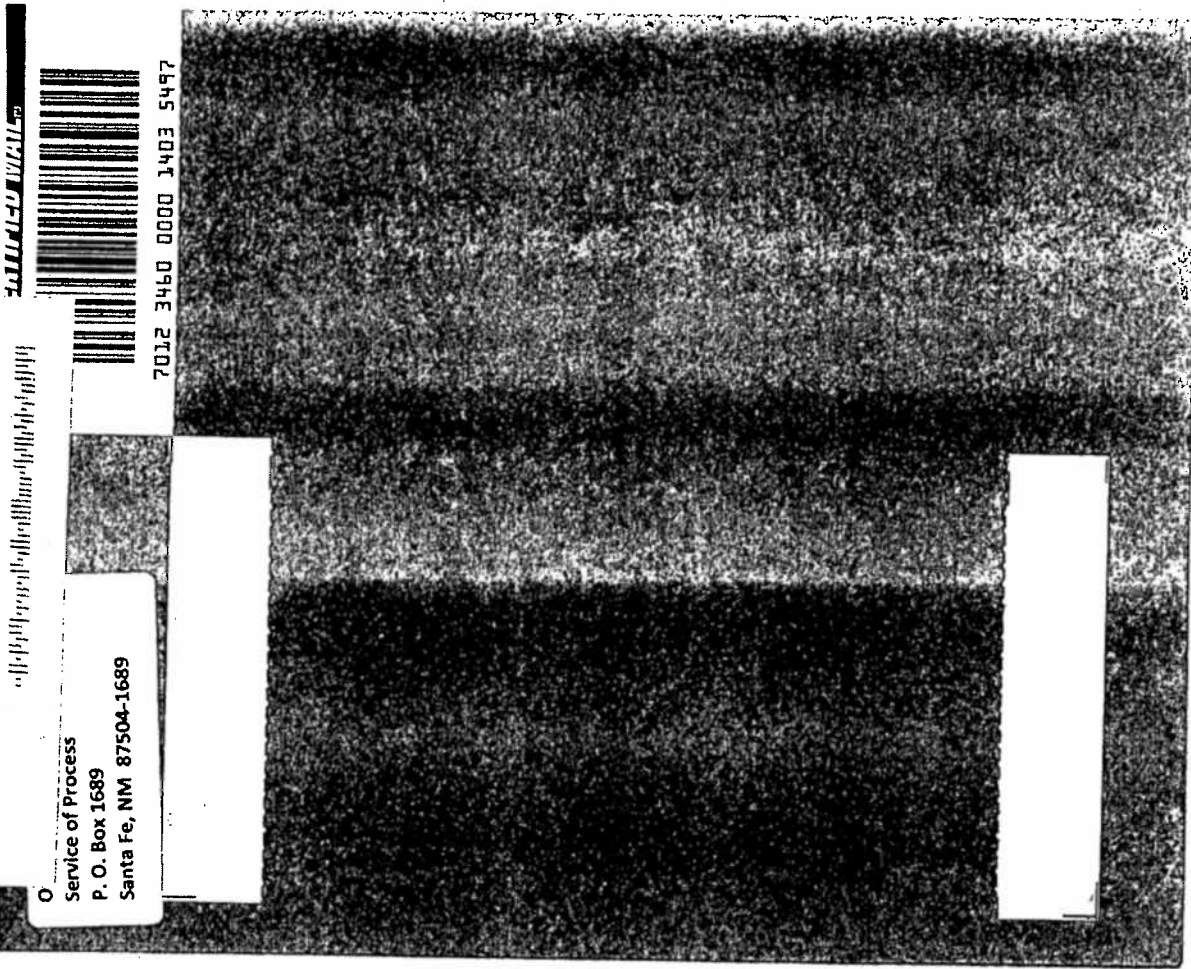
Post Office Box 3398

Albuquerque, New Mexico 87190-3398

Telephone: (505) 232-2298



Safeco Insurance Co. of America
C/O Corporation Service Company
123 E. Marcy St. Ste. 101
Santa Fe, NM 87501



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2/22/2013 5:26:00 PM
GREGORY T. IRELAND

SECOND JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO

Patricia Serna

VIOLA MARTINEZ and
LAURO MARTINEZ

Plaintiffs,

-vs-

No. D-202-CV-2013-01930

SAFECO INSURANCE COMPANY OF AMERICA, and
LIBERTY MUTUAL GROUP

Defendants.

PLAINTIFF'S CERTIFICATION
REGARDING ARBITRATION UNDER RULE 2-603

I, Viola Martinez, by and through Linda J. Rios, RIOS LAW FIRM, certify that:

 This case is subject to referral to arbitration under Local Rule 2-603. No party seeks relief other than a money judgment and no party seeks an award in excess of \$25,000.00 inclusive of punitive damages and exclusive of interest, costs and attorneys' fees.

 X This case is not subject to referral to arbitration under Local Rule 2-603 because at least one party seeks relief other than a money judgment and/or at least one party seeks an award in excess of \$25,000.00 inclusive of punitive damages and exclusive of interest, costs and attorneys' fees.

I further certify that the pleadings in this case are closed within the meaning of Guideline 1-5 of the Guidelines to Local Rule 2-603.

RIOS LAW FIRM

/s/ Linda J. Rios, Esq.

BY: Linda J. Rios
Attorney for Plaintiff
Post Office Box 3398
Albuquerque, N.M. 87190-3398
Telephone: (505) 232-2298

Original filed with the Clerk of
the District Court and copies served
with the Summons and Complaint.

/s/ Linda J. Rios, Esq.
Linda J. Rios

FILED IN MY OFFICE
DISTRICT COURT CLERK
11/26/2013 1:24:14 PM
GREGORY T. IRELAND

STATE OF NEW MEXICO
BERNALILLO COUNTY
SECOND JUDICIAL DISTRICT COURT

Gena Lopez

VIOLA MARTINEZ, ET. AL.,

v.

SAFECO INSURANCE COMPANY OF AMERICA, ET. AL.


No. D-202-CV-2013-01930

DISPOSITION ORDER FOR LACK OF PROSECUTION

THIS MATTER having come before the Court on its own motion, it appearing that no significant action has been taken in 180 or more days in connection with any and all pending claims,

IT IS THEREFORE ORDERED that all pending claims are dismissed without prejudice. Within thirty (30) days after service of this order, any party may move for reinstatement. If other parties have filed an appearance, movant shall comply with Rule 1-007.1 NMRA. Failure to comply with these requirements will result in the denial of the motion without hearing.

IT IS FURTHER ORDERED that all writs, judgments, final orders, or stipulations previously filed herein shall remain in full force and effect unless otherwise ordered.



THE HONORABLE THEODORE C. BACA
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I, the undersigned Employee of the District Court of Bernalillo County, New Mexico, do hereby certify that I served a copy of this document to all parties listed below on date of filing.

LINDA J. R. RIOS

PO BOX 3398
ALBUQUERQUE NM 87190-3398

By: 

David Montoya
Bailiff

FILED IN MY OFFICE
DISTRICT COURT CLERK
12/19/2013 10:29:39 AM
GREGORY T. IRELAND

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

Robin Wilson

VIOLA MARTINEZ and
LAURO MARTINEZ

Plaintiffs,

-vs-

No. D-202-CV-2013-01930

SAFECO INSURANCE COMPANY OF AMERICA, and
LIBERTY MUTUAL GROUP

Defendants.

MOTION FOR REINSTATEMENT

COME NOW Plaintiffs, by and through thier attorney Rios Law Firm (Linda J. Rios) and respectfully request this Court to reinstate the above captioned case and set aside the Order of Dismissal filed on November 26, 2013, entered by this Court.

As grounds for this motion, Plaintiff states the following:

1. Plaintiffs have attempted to settle this matter wihtout further litigation without sucess.
2. Plaintiffs are ready to proceed with the prosecution of this matter at this time and asks the Court to reinstate the case and provide a trial date.

WHEREFORE, Plaintiff requests this matter be reinstated and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

/s/ Linda J. Rios, Esq.

BY: Linda J. Rios
ATTORNEYS FOR PLAINTIFF
Post Office Box 3398
Albuquerque, New Mexico 87190-3398
Telephone: [505] 232-2298

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

VIOLA MARTINEZ and
LAURO MARTINEZ

Plaintiffs,

-vs-

No. D-202-CV-2013-01930

SAFECO INSURANCE COMPANY OF AMERICA, and
LIBERTY MUTUAL GROUP


Defendants.

ORDER GRANTING PLAINTIFF'S MOTION FOR REINSTATEMENT

THIS MATTER having come before the Court upon Plaintiffs' Motion for Reinstatement of the above captioned and number cause; the Court being otherwise fully advised;

THE COURT FINDS that it has jurisdiction over the parties and the subject matter involved herein and that the Motion is well taken and should be granted.

WHEREFORE, it is Ordered, Adjudged, and Decreed that the Motion for Reinstatement is granted and the above matter reinstated.



Ted Baca
District Court Judge

APPROVED:

RIOS LAW FIRM
/s/ Linda J. Rios, Esq.
Linda J. Rios
Attorneys for Plaintiffs
PO Box 3398
Albuquerque, NM 87190-3398
(505) 232-2298



Notice of Service of Process

Transmittal Number: 13015568
Date Processed: 10/02/2014

Primary Contact: Stephen Christo
Liberty Mutual Insurance Company
175 Berkeley Street
Boston, MA 02117

Entity:	Safeco Insurance Company Of America Entity ID Number 2781189
Entity Served:	Safeco Insurance Co. of America
Title of Action:	Viola Martinez vs. Safeco Insurance Company of America
Document(s) Type:	Summons/Complaint
Nature of Action:	Contract
Court/Agency:	Bernalillo County District Court, New Mexico
Case/Reference No:	D-202-CV-2013-01930
Jurisdiction Served:	New Mexico
Date Served on CSC:	10/02/2014
Answer or Appearance Due:	45 Days
Originally Served On:	NM Superintendent of Insurance on 09/30/2014
How Served:	Certified Mail
Sender Information:	Linda J. Rios 505-232-2298

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC

CSC is SAS70 Type II certified for its Litigation Management System.

2711 Centerville Road Wilmington, DE 19808 (888) 690-2882 | sop@cscinfo.com

STATE OF NEW MEXICO
OFFICE OF SUPERINTENDENT OF INSURANCE

Mailing Address: P.O. Box 1689, Santa Fe, NM 87504-1689

Physical Address: 1120 Paseo de Peralta, Room 428, Santa Fe, NM 87501

Main Phone: (505) 827-4601; Main Fax (505) 827-4734; Toll Free: 1-855-4-ASK-OSI

www.osi.state.nm.us

**SUPERINTENDENT OF
INSURANCE**

John G. Franchini – (505) 827-4299

**ACTING DEPUTY
SUPERINTENDENT**

Alan Seeley – (505) 827-4307



Service of Process

Room 434
(505) 827-1291

September 30, 2014

Safeco Insurance Co. of America
C/O Corporation Service Company
123 E. Marcy St. Ste. 101
Santa Fe, NM 87501

Re: Viola Martinez Vs Safeco Insurance Co. of America
D202CV2013-01930

Dear Mr. President:

In accordance with the provisions of NMSA 1978, Sections 59A-5-31 & 59A-32, enclosed is a copy of a Summons and a Complaint for Compensatory Damages and for Declaratory Judgment Under Contract of Insurance, in the State of New Mexico on the above styled cause. Service has been accepted on your behalf as of September 30, 2014.

Respectfully,

John G. Franchini, Superintendent

Enclosure

CERTIFIED MAIL 7012 3460 0000 1403 5497

SUMMONS

District Court: Second Judicial
Bernalillo County, New Mexico
400 Lomas Blvd. NW, Albuquerque NM, 87102
(505) 841-8400

Case Number: D-202-CV-2013-01930

Judge: Ted Baca

Viola Martinez, Plaintiff

Defendant

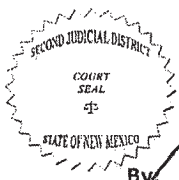
v.

Safeco Insurance Company
c/o: NM Superintendent of Insurance
Address: 1120 Paseo De Peralta
Santa Fe, NM 87501

Safeco Insurance Company, et al., Defendants

TO THE ABOVE NAMED DEFENDANT(S): Take notice that

1. A lawsuit has been filed against you. A copy of the lawsuit is attached. The Court issued this Summons.
 2. You must respond to this lawsuit in writing. You must file your written response with the Court no later than forty five (45) days from the date you are served with this Summons. (The date you are considered served with the Summons is determined by Rule I -004 NMRA.) The Court's address is listed above.
 3. You must file (in person or by mail) your written response with the Court. When you file your response, you must give or mail a copy to the person who signed the lawsuit.
 4. If you do not respond in writing, the Court may enter judgment against you as requested in the lawsuit.
 5. You are entitled to a jury trial in most types of lawsuits. To ask for a jury trial, you must request one in writing and pay a jury fee.
 6. If you need an interpreter, you must ask for one in writing.
 7. Dated at
 8. You may wish to consult a lawyer. You may contact the State Bar of New Mexico for help finding a lawyer at www.nmbar.org, 1-800-876-6657 or 1-505-797-6066.
- Dated at Albuquerque, New Mexico, this 11th day of September, 2014.



GREGORY T. IRELAND
CLERK OF THE DISTRICT COURT

By 
Deputy

/s/ Linda J. Rios, Esq.

By: Linda J. Rios
Post Office Box 3398
Albuquerque, N.M. 87190-3398
Telephone: [505] 232-2298
Fax: (888) 392-5307
Linda.rios@lrioslaw.com

THIS SUMMONS IS ISSUED PURSUANT TO RULE I -004 OF THE NEW MEXICO RULES OF CIVIL PROCEDURE FOR DISTRICT COURTS

RETURN¹

STATE OF NEW MEXICO)
 SECOND JUDICIAL DISTRICT)ss
 COUNTY OF BERNALILLO)

I, being duly sworn, on oath, state that I am over the age of eighteen (18) years and not a party to this lawsuit, and that I served this summons in _____ county on the ____ day of _____, by delivering a copy of this summons, with a copy of complaint attached, in the following manner:

(check one box and fill in appropriate blanks)

☐ to the defendant _____ (used when defendant accepts a copy of summons and complaint or refuses to accept the summons and complaint)

☐ to the defendant by [mail] [courier service] as provided by Rule I -004 NMRA (used when service is by mail or commercial courier service),

After attempting to serve the summons and complaint on the defendant by personal service or by mail or commercial courier service, by delivering a copy of this summons, with a copy of complaint attached, in the following manner:

☐ to _____, a person over fifteen (15) years of age and residing at the usual place of abode of defendant _____, (used when the defendant is not presently at place of abode) and by mailing by first class mail to the defendant at _____ (insert defendant's last known mailing address) a copy of the summons and complaint.

☐ to _____, the person apparently in charge at the actual place of business or employment of the defendant and by mailing by first class mail to the defendant at _____ (insert defendant's business address) and by mailing the summons and complaint by first class mail to the defendant at _____ (insert defendant's last known mailing address).

☐ to _____, an agent authorized to receive service of process for defendant _____.

☐ to _____, [parent] [guardian] [custodian] [conservator] [guardian ad litem] of defendant _____ (used when defendant is a minor or an incompetent person).

☐ to _____ (name of person), _____, (title of person authorized to receive service. Use this alternative when the defendant is a corporation or an association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico or any political subdivision).

Fees: _____

 Signature of person making service

 Title (if any)

Subscribed and sworn to before me this _____ day of _____, _____.

Judge, notary or other officer
authorized to administer oaths

Official title

My Commission expires: _____

USE NOTE

1. Unless otherwise ordered by the court, this return is not to be filed with the court prior to service of the summons and complaint on the defendant.
2. If service is made by the sheriff or a deputy sheriff of a New Mexico county, the signature of the sheriff or deputy sheriff need not be notarized.
3. (Adopted effective August 1, 1988; as amended by Supreme Court Order 05-8300-01, effective March 1,2005; by Supreme Court Order 07-8300-16, effective August 1,2007; by Supreme Court Order No. 12-8300-026, effective for all cases filed or pending on or after January 7,2013.)